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BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

VIRGINIA MYLENKI, Petitioner, vs. PENELOPE LIPPINCOTT, an individual dba FINESSE MODEL MANAGEMENT aka FINESSE MODELS, Respondent.	No. TAC 18-05 DETERMINATION OF CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on July 18, 2005 in San Francisco, California, before the undersigned attorney for the Labor Commissioner, assigned to hear the matter. Petitioner, VIRGINIA MYLENKI appeared in propria persona; Respondent, PENELOPE LIPPINCOTT appeared and was represented by her attorney, Ben Gale. For purposes of hearing, this matter was consolidated with two other petitions filed against the same respondent, TAC No. 14-05, filed by Laurel Suess, as guardian ad litem for Martina Suess, a minor, and TAC No. 16-05, filed by Leonor Tiongson. Based on the evidence presented at this

consolidated hearing and on the other papers on file in this matter, the Labor Commissioner hereby adopts the following decision.

FINDINGS OF FACT

1. At all times relevant herein, Penelope Lippincott was an individual doing business as Finesse Model Management aka Finesse Models (hereinafter "Respondent"), located in Sausalito, California. Respondent has not been licensed as a talent agency by the State Labor Commissioner at any time while doing business as Finesse Model Management aka Finesse Models.

2. At all times relevant herein, Virginia Mylenki has resided in ~~El Cerrito~~ Kentfield, California. In January 2003, she met Lippincott, who urged her to become a model, stating that there were lots of jobs through her modeling agency. On January 29, 2003, Mylenki enrolled in a professional modeling workshop offered by the Respondent, and paid the Respondent for this workshop, and for a photo shoot, along with the services of a professional make-up artist and hair stylist, and for 50 zed cards[1], with a total

[1] The two-sided zed cards show five photos of Mylenki, and list her first name, height, measurements, dress size, and the color of her hair and eyes. It also contains the name, address and telephone number of Finesse Model Management, printed onto the card (i.e., not affixed to a removable sticker). Zed cards are typically used in the modeling industry as the means of advertising the model to a potential customer, and providing the customer with a number to call for securing the model's services. In written materials provided to its models, Respondent explained, "your ZED card is the most important tool we have with which to market you.... Your fashion ZED card is submitted for Fashion Runway and Print work." In a document given to its models, explaining audition policies and procedures, models were instructed to "make sure to bring portfolio and zed card to all auditions." Respondent never offered to provide zed cards to petitioner without respondent's business name, address and phone number, or with any other business name, address and phone number as a contact for potential purchaser's of the petitioner's modeling services.

payment of $1,966.96 to Finesse Model Management. On March 1, 2003, Mylenki paid Respondent an additional $1,603.38 for additional photo shoots and prints, and for a "European model's book." On March 5, 2003, Mylenki paid $4,6000 to Respondent in order to attend the 2003 MAAI Modeling Convention in New York City, scheduled for the next month. Lippincott had encouraged Mylenki to sign up to attend this convention, stating that it would open up many job opportunities. This payment covered more photo shoots and prints, the cost of attending the convention and participating in various modeling competitions, and lodging. On April 14, 2003, Mylenki paid $546.96 to the Respondent for additional photograph prints. There was no formal written contracts reflecting these agreements between petitioner and respondent for the purchase of these products or services, however, Respondent provided the petitioner with a printed description of all of its "programs" and "packages," and their costs, and there are written purchase orders reflecting which "programs" and "packages" were purchased, and the amounts paid. Neither the written description of the various "programs" and "packages," nor the purchase orders contain any statement indicating that petitioner had a right to a refund, or a right to cancel the agreement to purchase the services or products.

3. Records presented by Mylenki indicate that during the period from May 9, 2003 (the date of her first modeling assignment with Finesse) until December 2, 2004 (the date of her last), there were about 20 different occasions in which Mylenki performed paid modeling assignments that were obtained through the Respondent. All of the payments that Mylenki made to the Respondent that are detailed in paragraph 2, above, were made before she had obtained

the first of these modeling assignments.

4. For all of her modeling assignments performed in 2003, Respondent deducted a commission equal to 20% of her earnings for runway modeling, and 25% of her earnings for print modeling. These commissions are reflected in a document entitled "Job and Commission Payment Schedule - Year 2002," which Respondent provided to Mylenki in early 2003. Starting in January 2004, Respondent apparently discontinued the practice of charging commissions on its model's earnings, as reflected in a document "Job Payment Schedule-Year 2004," which was provided to petitioner in early 2004. Both of these documents contained information about respondent's practices regarding modeling assignments and the payment of models. Among other things, these documents provided that "Finesse will invoice clients after all time sheets have been turned in," that models should "allow 60-90 days from completion of job for model pay," and that job checks are distributed only once a month, at a meeting on the second Tuesday of each month. Finally, the document dated 2004 purports that the models are independent contractors, and further purports to release Finesse from liability for any injury that may occur while performing work on the premises.

5. Respondent maintained a telephone number that provided recorded information about upcoming auditions for modeling work. This information was frequently updated, and in a written document given to all models "on the Finesse roster," Respondent listed this number and directed the models to "call the Finesse 'hot line' daily.... It is your responsibility to keep abreast of open calls and job opportunities." This same document warned models to "never ever give out your home phone number or address to the client," on

an audition, but instead to "always give out the Finesse phone number and address." Next, models were instructed to "call the Finesse 'Hot Line' for audition results, call backs, etc." In another document dealing with modeling assignment policies and procedures, Respondent instructed its models "to call Finesse and let us know of your finish time and a brief rundown on the job, as soon as the assignment is completed. Finally, in a document entitled "Who to Contact," Respondent instructed its models to contact Brandi Morgan (Penelope Lippincott's daughter) for "job/audition information," and to learn "what jobs I have been submitted for."

6. Lippincott's business card, which she provided to models and to clients, identified her as a "model & talent manager."

7. Petitioner testified that based on the manner in which Respondent operated its business, and the content of written and oral communications with the Respondent, petitioner believed that Respondent was offering or promising to obtain modeling employment on her behalf with third party clients, and that Respondent was attempting to obtain (and had obtained) such employment for her, at least as to some of her modeling jobs.[2]

8. The evidence indicates that petitioner has been paid for all of the modeling assignments including those which she performed on behalf of the Respondent, or for third-party clients on work

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[2] For just one example of employment with a third-party employer, on September 27, 2004 Mylenki performed modeling services in connection with a print modeling job for Corin Rasmussen Jewelry Designs, a job Mylenki learned about from Respondent. Mylenki got this job after auditioning for it Respondent's headquarters. The client, Corin Rasmussen, was present at the audition and decided which models should be hired for the job, and which pieces of jewelry should be worn by each model for the photo shoot.

that was obtained by the Respondent. However, payments were often made months after the work was performed, and only after Mylenki made repeated demands for payment. For example, although Mylenki performed modeling services for the Respondent on December 2, 2004 in connection with a fashion show produced by the Respondent for the purpose of promoting the Respondent's modeling business, Respondent failed to pay Mylenki her compensation of $125 for her services at this event until March 8, 2005.

9. Mylenki terminated her affiliation with Respondent in January 2005.

10. Respondent testified that Finesse never procured employment for a model with any third party, and that she never negotiated with any third party as to what a model should be paid for modeling services. Instead, according to Respondent, Finesse enters into agreements with third parties for the purchase of Finesse's services as a "production company," and under these agreements the third party pays Finesse to produce a fashion runway show or a print advertisement[3]. Clients are not billed for the models' services, they are billed for Finesse's "production services." In its capacity as a "production company," Finesse

[3] Following the close of the hearing, Respondent provided copies of only two such agreements to produce events: an agreement between the Respondent and Robin Montero Productions concerning the production of the October 7, 2004 "Weddings in the Wine Country Bridal Fashion Show," and an agreement between "Finesse Modeling Agency" (another of Respondent's fictitious business names) and General Growth Properties, Inc./New Park Mall, concerning the November 13, 2004 fashion show at that mall, under which Respondent agreed to provide models, contact mall tenants for fittings prior to the start of the fashion show, run the fashion show, and return the merchandise to retailers after completion of the show. Respondent did not provide copies of agreements to produce any other fashion show or print advertisement.

hires the necessary models, photographers, graphic designers, hair stylists, etc., needed to perform the job for which Finesse was hired. Finesse, not the third party client, decides how much to pay the models, and anyone else hired in connection with the production, as compensation for their services, and these payments are made by Finesse.[4] However, Respondent admitted that the decision on which model to hire for a job is not hers alone, acknowledging that she "need[s] to show clients zed cards, so they can decide whether a model has the look they want."

11. Mylenki filed this petition to determine controversy on April 4, 2005, seeking reimbursement of all amounts she paid to the Respondent, allegedly $8,812.75. (Based on the evidence presented at this hearing, this amount is actually $8,717.30.) Mylenki also seeks an award of all appropriate penalties under the Talent Agencies Act. Finally, the petition prays for payment of outstanding modeling earnings in the amount of $520, however, as indicated above, the evidence presented at hearing reflects that Respondent ultimately paid whatever modeling earnings were due to the petitioner, and Mylenki did not pursue this part of her claim at the hearing.

12. Respondent filed an answer to the petition on June 6, 2005, asserting that "Finesse is not in the business of procuring work for models," but "simply hires models, photographers,

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[4] Despite the fact that the model's rate of compensation was solely determined by Finesse, Respondent insisted that these models are not employees of Finesse, but rather, independent contractors. Models were required to sign an acknowledgment stating that "all models are independent contractors." Respondent testified that in accordance with her belief that the models are independent contractors, Respondent is not covered by any workers compensation insurance policy.

stylists, make-up artists and graphic designers on a per assignment bases [sic] for the projects that we are engaged to develop or produce." According to Respondent, her business consists of "a full service marketing and production company," Finesse Creative Productions, which "specializes[s] in the production of print ads, live productions and promotional events, for retailers, designers and manufacturers," and which "own[s] a new bay area fashion magazine, where advertising is sold and ad development is a service provided to our clients." In addition, the answer states that "we have an In-House model development division, Finesse Model Management," which runs "workshop programs ... strictly for skill development." Finally, Respondent's answer acknowledged that although she operated a talent agency, known as Clymer's Modeling and Talent Agency, for a period of time from the late 1980's to early 1990's, "[d]ue to the change in laws at that time regarding the agency business we chose to eliminate that service and proceed in production only."[5]

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[5] Two determinations issued by the Labor Commissioner in cases that were filed against Clymer's Modeling and Talent Agency, TAC No. 11-87 and TAC No. 60-94, explained the various requirements of the Talent Agencies Act. In TAC 60-94, the Labor Commissioner concluded that Respondent (then known by her married name, Penny Clymer) had engaged in the occupation of a talent agency without a license, and for that reason, determined that her contract with a model was void and unenforceable, and ordered her to reimburse the model for unlawfully collected fees. Previously, in TAC No. 11-87, covering a period of time when Respondent was licensed as a talent agency, the Labor Commissioner ordered the partial reimbursement of amounts charged to a model for photo composites, and warned Respondent that pursuant to a newly enacted amendment to the Talent Agencies Act, talent agencies would no longer be allowed to charge models anything for photographs. In the face of these Labor Commissioner determinations, Respondent decided to change the method by which she conducts her business, believing that by restructuring as an ostensible "production company," the Talent Agencies Act would no longer apply to her business operations.

LEGAL ANALYSIS

1. Labor Code §1700.4(b) includes "models" within the definition of "artists" for purposes of the Talent Agencies Act (Labor Code §§1700-1700.47). Petitioner is therefore an "artist" within the meaning of Labor Code section 1700.4(b).

2. Labor Code §1700.4(a) defines a "talent agency" as any person or corporation "who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist." To be sure, the Labor Commissioner has held that "a person or entity that employs an artist does not 'procure employment' for that artist within the meaning of Labor Code §1700.4(a), by directly engaging the services of that artist.... [T]he 'activity of procuring employment,' under the Talent Agencies Act, refers to the role an agent plays when acting as an intermediary between the artist whom the agent represents and the third party employer who seeks to engage the artist's services." *Chinn v. Tobin* (TAC No. 17-96) at p. 7. Following this rationale, in *Kern v. Entertainers Direct, Inc.* (TAC No. 25-96), the Labor Commissioner concluded that a business that provided clowns, magicians and costumed characters to parties and corporate events did not act as a talent agency, within the meaning of Labor Code §1700.4(a). In *Kern*, the respondent set the prices that it charged to customers for the entertainers' services, selected the entertainers that it provided to the customers, determined the compensation that it paid to these entertainers for providing these services, and thus, we concluded, "became the direct employer of the performers." Significantly, however, in both *Chinn* and in *Tobin*, no evidence was presented that the respondents "ever

procured or promised or offered or attempted to procure employment for petitioners with any third party. That lack of evidence as to promises or offers to obtain employment with third parties or actual procurement activities" was found to distinguish those cases from cases in which persons or business were determined to be acting as talent agencies within the meaning of Labor Code §1700.4(a). *Chinn v. Tobin, supra,* at p. 11. Thus, in determining whether Respondent engaged in the occupation of a "talent agency," we must analyze whether Respondent engaged in any of the activities which fall within the statutory definition of "talent agency," i.e., procuring or offering to procure or promising to procure or attempting to procure modeling employment for the petitioner with a third party employer.

3. Labor Code §1700.5 provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license ... from the Labor Commissioner." The Talent Agencies Act is a remedial statute that must be liberally construed to promote its general object, the protection of artists seeking professional employment. *Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347, 354. For that reason, the overwhelming weight of judicial authority supports the Labor Commissioner's historic enforcement policy, and holds that "even the incidental or occasional provision of [talent agency] services requires licensure." *Styne v. Stevens* (2001) 26 Cal.4th 42, 51. These services are defined at Labor Code §1700.4(a) to include offering to procure or promising to procure or attempting to procure or procuring employment for an artist. In analyzing the evidence of whether a person engaged in activities for which a talent agency

license is required, "the Labor Commissioner is free to search out illegality lying behind the form in which the transaction has been cast for the purpose of concealing such illegality." *Buchwald v. Superior Court, supra,* 254 Cal.App.2d at 355.

4. The evidence before us leads us to conclude that at least on some occasions Respondent procured modeling employment for petitioner with third party employers. The evidence with respect to the audition and photo shoot for Corin Rasmussen Jewelry Designs leaves absolutely no doubt that Corin Rasmussen was a third party employer who hired the petitioner to perform modeling services, and that this employment was procured through Respondent's efforts. Despite Respondent's claim that whenever it provided a client with a model's services, she did so as a "producer" of the client's fashion runway show or print advertisement, Respondent failed to present corroborating testimony from any clients. Moreover, the Respondent's documentary evidence related to only some of the modeling engagements which she had obtained for the petitioner. The status of the respondent as a "producer" of these print advertisements and fashion shows is an affirmative defense to the allegation that respondent acted as a "talent agency" by obtaining work for the model(s), and as such, the burden of proof shifts to the Respondent once the petitioner establishes (as was the case here) that the Respondent obtained modeling work for the petitioner. At least as to some of the modeling employment at issue herein, Respondent failed to meet this burden of proof to establish she was the model's employer. But even assuming, *arguendo,* that respondent never procured and never attempted to procure modeling employment for the petitioner with any third party

employer, that does not dispose of the question of whether Respondent ever offered to procure or promised to procure such employment for the petitioner. Not only did the petitioner believe that Respondent had offered and promised to do just that, but more importantly, taking the evidence as a whole, we conclude that any reasonable person in petitioner's position would have formed that same belief. There is simply no other way to interpret many of Respondent's policies and procedures, and Respondent's oral and written representations of what she could or would do for the petitioner. These policies and procedures and representations include the use of zed cards with Finesse's name, address and telephone number printed on the cards, instructions that the zed cards are used "to market you," instructions to telephone Respondent's business to find out "what jobs you have been submitted for," business cards that identified the Respondent as a "model and talent manager," instructions to call Respondent's office at the completion of every modeling job to report that the job has ben completed (something that would scarcely seem necessary if Respondent or other employees of the Respondent were involved in the "production" of the fashion show or print advertisement for which the petitioner performed modeling services), and the Respondent's statement that work will be available because "I have lots of clients." Each and every one of these policies and procedures and representations necessarily has the effect of leading the model to believe that Respondent will attempt to procure employment on behalf of the model with third party employers, and thus, as a matter of law, constitutes an offer to procure such employment. Consequently, we conclude that through

Respondent's published policies and procedures and representations to models, Respondent "offered to procure employment" for models with third party employers, and therefore, engaged in the occupation of a "talent agency" within the meaning of Labor Code §1700.4(a). As such, despite Respondent's efforts to structure its operations (or perhaps more accurately, efforts to appear to have structured its operations) so as to avoid the requirements of the Talent Agencies Act, Respondent violated the Act by operating as a "talent agency" without the requisite license[6].

5. An agreement between an artist and a talent agency that violates the licensing requirement of the Talent Agencies Act is illegal, void and unenforceable. *Styne v. Stevens, supra,* 26 Cal.4th at 51; *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246, 262; *Buchwald v. Superior Court, supra,* 254 Cal.App.2d at 351. Having determined that a person or business

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[6] Ironically, these efforts to reconstitute her business as a "production company" have created a whole new set of liabilities for the Respondent. The evidence presented compels the conclusion that at least as to some of petitioner's modeling assignments, Respondent was the petitioner's employer - by effectively engaging her to perform modeling services as part of a fashion show or print advertisement produced by Respondent, by establishing her rate of compensation, and by exercising control over her work (determining the time and place the work would be performed, the fashions she would wear while modeling, etc.). As an employer, Respondent violated a raft of Labor Code protections for employees, including Labor Code §204 (which requires the payment of wages to employees no later than 26 days after the work is performed, between the 16th and 26th day of any month in which the work was performed between the 1st and 15th day of that month, and between the 1st and 15th day of the month following any month in which work was performed between the 16th day and the final day of the month - - regardless of when the employer receives payment from a customer), Labor Code §226 (requiring itemized wage statements accompanying each payment of wages), Labor Code §1299 (requiring employers to keep work permits on file in connection with the employment of minors), and Labor Code §3700 (requiring workers compensation insurance coverage).

entity procured, attempted to procure, promised to procure, or offered to procure employment for an artist without the requisite talent agency license, "the [Labor] Commissioner may declare the contract [between the unlicensed talent agent and the artist] void and unenforceable as involving the services of an unlicensed person in violation of the Act." *Styne v. Stevens, supra,* 26 Cal.4th at 55. Moreover, the artist that is party to such an agreement may seek disgorgement of amounts paid pursuant to the agreement, and may be "entitle[d] to restitution of all fees paid to the agent." *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. The term "fees" is defined at Labor Code §1700.2(a) to include "any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by any person conducting the business of a talent agency." Restitution is therefore not necessarily limited to amounts that the unlicensed agent charged for procuring or for attempting to procure employment, but rather, may include amounts paid for services for which a talent agency license is not required.

6. As a separate substantive basis for recovery of the amount that were paid to the respondent, Labor Code §1700.40(a) provides that "[n]o talent agency shall collect a registration fee." Labor Code §1700.2(b) defines "registration fee" as "any charge made, or attempted to be made, to an artist for any of the following purposes ... (3) photographs ... or other reproductions of the applicant." Subsection (b) of §1700.40 provides that "[n]o talent agency may refer an artist to any person, firm or corporation in which the talent agency has a direct or indirect interest for other services to be rendered to the artist, including but not limited to

photography, ..., coaching, dramatic school ... or other printing." Labor Code §1700.40 therefore made it unlawful for the Respondent to collect of the amounts that were paid by petitioner for photo shoots, prints, zed cards, a portfolio and for attendance at respondent's modeling workshop. Labor Code §1700.40(a) provides for the imposition of a penalty equal to the amount of the unlawfully collected "registration fee," if the artist fails to procure or be paid for employment for which a "registration fee" has been paid.

7. However, under the facts of this case, restitution of the amount that was paid and the imposition of this penalty is barred by the statute of limitations that is applicable to proceedings under the Talent Agencies Act, found at Labor Code §1700.44(c). This statute provides: "No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to the commencement of the action or proceeding." To be sure, this proceeding itself is not barred by §1700.44(c), in that the petitioner alleged (and proved) that Respondent violated the Act within one year of the filing of the petition by procuring modeling employment with third party employers, and thereby acting as a "talent agency" without the requisite license. But restitution and imposition of a penalty, are forms of affirmative relief that are subject to the one year limitations period set out at Labor Code §1700.44(c), so that an artist is only entitled to restitution of amounts paid to the talent agency within the one year period prior to the filing of the petition to determine controversy. *Greenfield v. Superior Court* (2003) 106 Cal.App.4th 743. Here, the payments

that petitioner seeks to recover were made to the respondent during the period from January to April 2003, well more than one year prior to the date of the filing of this petition to determine controversy. Likewise, a penalty pursuant to Labor Code §1700.40(a) cannot be awarded where the underlying violation which results in the penalty took place more than one year prior to the date of the filing of the petition to determine controversy. As a result, despite evidence that would compel an order of reimbursement (and likely result in the imposition of a penalty) if these payments had been made within the limitations period, we are unable to grant Mylenki the relief that she seeks through this petition.

8. Petitioner may be entitled to remedies under the provisions of the Advance-Fee Talent Services[7] Act (Labor Code §1701-1701.20), as to which the one year limitations period found at Labor Code §1700.44(c) would not apply. But any available remedies under the Advance-Fee Talent Service Act ("AFTSA") cannot be awarded in the instant proceeding to determine controversy under the Talent Agencies Act (Labor Code §1700-1700.47). Labor Code §1700.44 authorizes the Labor Commissioner to hear and decide

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[7] The term "advance-fee talent service" is defined at Labor Code §1701(b) to mean a person who charges, or attempts to charge, or receives an advance fee from an artist for any of the following products or services: procuring, offering, promising or attempting to procure employment or auditions; managing or directing the artist's career; career counseling or guidance; photographs or other reproductions of the artist; lessons, coaching or similar training for the artist; and providing auditions for the artist.

The term "advance fee" is defined at Labor Code §1701(a) as any fee due from or paid by an artist prior to the artist obtaining actual employment as an artist or prior to receiving actual earnings as an artist or that exceeds the actual earnings received by the artist.

controversies arising under the Talent Agencies Act. In contrast, the provisions of AFTSA may be enforced by the Attorney General, any district attorney, any city attorney, or through the filing of a private civil action. (See Labor Code §§1701.15, 1701.16.) Furthermore, under Labor Code §1701.10(a), any person engaging in the business or acting in the capacity of an advance-fee talent service must first file a bond with the Labor Commissioner in the amount of $10,000, for the benefit of any person damaged by any fraud, misstatement, misrepresentation or unlawful act or omission under the AFTSA. We hereby take administrative notice of the fact that Respondent has not posted such bond with the Labor Commissioner.

ORDER

Based on all of the above, IT IS HEREBY ORDERED that despite our finding that Respondent violated the Talent Agencies Act by engaging in the occupation of a talent agency without a license, and by collecting fees that are prohibited under the Act, the statute of limitations found at Labor Code §1700.44(c) precludes us from granting the relief sought by the petition, and that therefore, petitioner's request for reimbursement of fees that were paid to respondent and for penalties is denied.

Dated: 11/22/05

MILES E. LOCKER
Attorney for the Labor Commissioner

ADOPTED AS MODIFIED BY THE LABOR COMMISSIONER AS THE DETERMINATION:

Dated: 11/22/05

DONNA M. DELL
State Labor Commissioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. §1013a)

(Virginia Mylenki v. Finesse Model Management;)
(Penelope Lippincott [TAC 18-05])

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102.

On November 23, 2005, I served the following document:

DETERMINATION OF CONTROVERSY

by placing a true copy thereof in envelope(s) addressed as follows:

VIRGINIA MYLENKI
7 Manor Road
Kentfield, CA 94904

BEN GALE, ESQ.
4392 Redwood Highway, Suite 100
San Rafael, CA 94903

PENELOPE LIPPINCOTT
FINESSE MODEL MANAGEMENT
469 Coloma Street
Sausalito, CA 94965

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on November 23, 2005, at San Francisco, California.

Mary Ann E. Galapon
MARY ANN E. GALAPON